IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1832 OF 2003

1) M/s PASO Investments Pvt. Ltd. Having its office at 118, Vardhaman Comoplex, 10 Fitwell Compound, LBS Marg, Vikroli (W), Mumbai 2) Mr. Paras S. Mehta Director, Residing at B/2, Jemini Nath Co-op. Hsg. Soc.Ltd. LBS Marg, Gavdevi Lane, Ghatkopar (W), Mumbai - 86. 3) Malti S. Mehta 4) Manisha S. Mehta Both residing at B/3, Jemini Nath CHS Society, LBS Marg, Gavdevi Lane, Ghatkopar (W), Mumbai - 86.	Petitioners

Versus

1) Greater Bombay Co-op. Bank GBCB House, 89, Bhuleshwar Mumbai - 400 002 2) Special Recovery Officer, Greater Bombay Co-op. Bank Ltd. Amir Industrial Estate, 2nd Floor, Sun Mill Compound, Lower Parel, Mumbai - 13 3) Asstt. Joint Registrar on Deputation, Co-op. Societies, Wadala, Mumbai 4) State of Maharashtra Mantralaya, Mumbai	Respondents

Mr. Vasantrao B. Ghorpade, Advocate for the Petitioners

Ms. Mamta Sadh, AGP for the Respondents 3 & 4.

CORAM : ABHAY S. OKA, J.

DATE : 30TH JUNE, 2006

P.C.

1. I am informed that now the rule-nisi has been served on the Respondents. A report to that effect duly signed by the Deputy Sheriff and the concerned Bailiff attached to Office of the Sheriff has been placed on record.

2. I have heard the learned counsel for the Petitioners and learned AGP appearing for respondents 3 and 4. None appeares for respondents 1 and 2. On 23rd February, 2001, the Assistant Registrar of Co-operative Societies, Mumbai passed an order issuing Recovery Certificate under Section 101 of Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "said Act") against the Petitioners. The recovery certificate is in the sum of Rs.6,97,154/- along with interest @17% on the principal amount. An order was made on 3rd Septermber, 2002 by the Respondent No. 2, the Special Recovery Officer in execution of the Recovery Certificate directing attachment of certain properties mentioned in the order including a residential flat allegedly held by one of the Petitioners. The said order dated 3rd September 2002 is passed in exercise of powers conferred by Rule 107 of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as "the said Rules").

The other prayers in the petition are consequential prayers.

3. The learned counsel for the Petitioners submitted that instead of proceeding against the assets of the Petitioner No. 1-Company, the Special Recovery Officer has attached a residential flat which is held by the Petitioner nos. 2 to 4. He submitted that the order of attachment is illegal. The learned AGP invited my attention to the averments made in Paragraph 12 of the petition and contended that this petition need not be entertained.

4. According to the case of the petitioners, the order of attachment has been made by the Special Recovery Officer in exercise of powers under Rule 107 of the said Rules. Sub Rule 19 of Rule 107 provides for an efficacious remedy to a person aggrieved by an order of attachment. Sub Rule 19 of Rule 107 provides that if any objection is made to attachment of any property on the ground that such property is not liable to such attachment, the Officer shall investigate the objection and dispose it off on merits. The Sub Rule further provides that investigation need not be made if according to the Officer the objection is frivolous. Clause (c) of Sub Rule 19 gives a right to a party against whom order is made under Rule 19 to institute a suit to establish the rights in respect of the property.

5. In Paragraph no. 12 of the memorandum of petition, it is stated that the petitioners have made an application before the Special Recovery Officer which is pending for consideration. Thus on their own showing it appears that the petitioners have availed of the remedy of raising objection to the attachment. The learned counsel for the petitioners is unable to make a statement whether the said application is still pending. If the said application is pending as of today, the same will have to be decided expeditiously. If the application is already decided, the petitioners will have to adopt appropriate proceedings. In view of this position, no relief can be granted in this petition of setting aside an order of attachment. Hence, I pass following order.

i) If the application made by the Petitioners which is referred to in Paragraph No. 12 of the memorandum of petition is still pending, the Respondent No. 2 will decide the said application within a period of 12 weeks from today. In such event, interim relief granted in this petition on 11th March, 2003 will continue to operate for a period of 16 weeks from today.

ii) If the application made by the Petitioners is already decided, the Petitioners will be free to adopt appropriate remedies for challenging the decision on

the application.

iii) It is made clear that no adjudication is made on the merits of the issue relating to the legality and validity of order of attachment which is the subject matter of this petition.

iv) Subject to above directions, the Writ Petition is rejected. Rule is discharged. No order as to costs.

(ABHAY S. OKA, J.)